Carl Schöneich

Portugal

Position paper concerning the Charta of digital fundamental rights for the EU

**Introduction**

There is no doubt that the world we are living in has changed drastically since the era of the digital revolution. Every era of drastic change brings change into the way we live and organize living, extending to the legal matter and the ethical principles. Considering this, we, the republic of Portugal are proud to present our views and suggestions on the Charta of digital fundamental rights.

The Charta of digital fundamental rights was initiated, shaped and written by a group of German activists. The group worked fourteen month to form and write down what they thought to be the best way to phrase these new manifested principles for the digital world we are living in. National and international media organizations and celebrities brought the new-formed Charta into the political sphere and discussion. The organization of the Charta itself created spaces for experts, citizens and interested people in general, to take part in the discussion and revision process of the existing Charta. Through this process new ideas and formulations are created constantly.

After being brought up in the European parliament, it is now our turn to discuss and revise the work that has been done so far. It is our duty and responsibility to look at the topic critical and find ways to connect the views of all the countries taking part in this discussion. Since the digital reality is very different in the various countries of the European union and since we do not exactly know what the future might hold, we will have to ensure that the legal texts are broadly applicable.

Since what we have to work with is only a draft of the Charta of digital fundamental rights, it will be necessary for us to not only criticize, but to propose new ideas for the legal texts. We as Portugal, will try to have the international/ European vision on the issue, like everybody of the participating states should have, but we will interpret and adjudicate as the republic of Portugal.

In the following, we have put together the main issues we would like to discuss. The main questions under which we look a these topics should still, at all time, be; do we need the digital fundamental rights? If yes, how should they be enunciated? And how should we change the existing draft?

**Article 1**

(3) The rights under this Charter shall be enforceable vis-à-vis State agencies and private

Individuals.

We believe, that the Charta of fundamental rights will drastically change the way we interpret just these fundamental rights in general, if a third party is bound by the manifest. In the historical development fundamental rights were always rights for private individuals to fight back against the government. If third parties like international companies are involved, our economic system might be put to a hard test, especially considering the significance of digital companies now a days and in the future.

We do see, that the government has no monopole of power anymore or is acting like a “leviathan” anymore, and that digital working companies do hold great masses of informational power, but we are still convinced, that the Charta of digital fundamental rights should be held between the government and the citizens.

**Article 5**

(2) Digital harassment, mobbing and activities likely to pose a serious threat to the reputation

or physical integrity of a person shall be prevented.

The second paragraph has to get revision. Sometimes it is hard to judge whether something is digital harassment or not, depending on the point of view. Also it is hard to combine with the Right of free speech. We should have mechanics to prevent digital harassment, but this wording does not seem accurate to us.

**Article 18 - Right to be forgotten**

The right to start a new life in the digital world is important, not only to ensure personal freedom but also freedom of speech.

But there is an issue, which is not dealt with in the Charta that we would like to address and insert into this right in a second paragraph. The issue is the question: What happens to the digital individual, after the physical one dies?

Our proposition is to add the data of social networks and so on to the heredity and let the bereaved decide what to do with it. Should the situation arise, the bereaved should be able to use the right to be forgotten.

**Article 19** - **Youth and Education**

Even though people with special needs are particularly protected by article 19, we believe there should be special regulatory choices made to protect the youth and enforce the digital education to a level of protection needed for the younger generations and to keep the dangers of modern everyday technologies from the youth.

**Do we need fundamental rights on digital warfare?**

Our last discussion offense might be the question on digital warfare. Since other particular issues of the digital and technological progress have been addressed in the Charta, we ask: Why is digital Warfare not a discussion topic here?